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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WENDY CAROLINA COLORADO,

Defendant and Appellant.

E047336

(Super.Ct.No. FVA701859)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Melissa Mandel and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Wendy Carolina Colorado pled guilty to knowingly presenting a false statement in support of a claim for an insurance policy benefit. (Pen.

Code, § 550, subd. (b)(1).)¹ Defendant contends that the amount of restitution she was ordered to pay the victim as a condition of probation should be reduced to zero. We affirm.

BACKGROUND

On December 11, 2006, defendant purchased insurance after she was involved in a traffic collision. The collision occurred around 7:20 p.m. Defendant told another party to the collision that she did not have insurance because she had not made a payment. At 8:01 p.m. defendant called her insurer, the victim, to reinstate her policy that had been cancelled on November 22, 2006, due to nonpayment. She told the victim she had not been involved in any claims or accidents since her policy had been cancelled and stated that her address was in a different city than it actually was. On January 17, 2007, the victim was notified of the traffic collision by another party. The victim then opened a claim file and began its investigation.

The victim retained legal counsel to advise it of its rights and responsibilities regarding defendant's policy and a claim from the collision. Instead of paying out a claim, the victim rescinded defendant's policy due to her fraud.

Defendant's plea agreement required full restitution to the victim and the two other parties to the collision. At a restitution hearing, the People requested the restitution to the victim be set at \$6,737 to cover all the victim's bills for attorney fees and costs. The trial court set restitution to the victim at \$2,500. The trial court stated that, "in the

¹ All further statutory references shall be to the Penal Code unless otherwise indicated.

Court’s opinion, certainly a portion of the reason, if not the whole reason, arguably if you’re counsel for the [victim]—a portion was mandated and required by virtue of the conduct of [defendant]. Even in the best of circumstances, some of the legal fees incurred related to actions caused by [defendant], absent any negative conduct by her—forget whether it’s criminal or not—but [for] any conduct requiring an investigation, there would be no legal fees.”

The defendant opposed restitution for any of the legal fees. The court responded that, “I think that there were necessities, representation created by [defendant’s] conduct but for it would not have occurred. [¶] I don’t find—except because of my reduction, I don’t find that the billings incurred were for no purpose to waste money, anything other than for possible either anticipatory or real protection involving the rights of the parties.”

STANDARD OF REVIEW

“A restitution order is reviewed for abuse of discretion and will not be reversed unless it is arbitrary or capricious. [Citation.] No abuse of discretion will be found where there is a rational and factual basis for the amount of restitution ordered. ‘ “[T]he standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt.” ’ [Citation.]” (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542-1543.)

DISCUSSION

Defendant contends that the trial court erred in awarding restitution to the victim for a portion of its attorney fees. In particular, defendant contends that restitution for attorney fees may only be awarded if the fees were incurred to collect restitution because,

according to defendant, section 1202.4 forbids restitution for attorney fees for recovering “general losses” and acts as a restriction even when the restitution is a condition of probation under section 1203.1. We disagree.

“ ‘Because [section 1202.4] uses the language “including, but not limited to” these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant’s criminal behavior, even if not specifically enumerated in the statute.’ [Citation.]” (*People v. Crisler* (2008) 165 Cal.App.4th 1503, 1508 (*Crisler*).) In *People v. Lyon* (1996) 49 Cal.App.4th 1521, 1525 (*Lyon*), a restitution order for attorney fees incurred by the victim to prevent the defendant’s disposal of his assets was a “proper, necessary, and a logical result” of the defendant’s criminal conduct and the order was upheld.

As part of the victim’s investigation into a claim against defendant’s fraudulently procured policy, the victim incurred attorney fees in order to get legal advice regarding its options as well as assistance in rescinding the policy. The trial court expressly found that the investigation and legal fees were necessitated by the actions of the defendant. Unlike *Lyon*, in which the fees were necessary to preserve assets for future recovery of restitution, the victim’s fees here were necessary to prevent an economic loss from paying out on the claim against defendant’s policy. Defendant’s fraudulent procurement of her insurance policy immediately following the collision was the direct cause of the victim’s investigation and other actions to mitigate potential losses. Expenses, including attorney fees, from such efforts at mitigation are economic losses. Indeed, such losses are more direct than proactive efforts to preserve a defendant’s assets for future recovery

of restitution, such as in *Lyon*. Accordingly, the trial court did not abuse its discretion in ordering restitution to the victim for a portion of its attorney fees.

Defendant argues that the attorney fees for asset preservation in *Lyon* were permitted because they were costs of collection and thus permissible because attorney fees that are costs of collection are specifically enumerated in section 1202.4, subdivision (f)(3)(H), as economic losses. However, the court in *Lyon* only indicated that the fees were an economic loss without specifying recoverability as a cost of collection. (*Lyon*, *supra*, 49 Cal.App.4th at p. 1525.) As indicated in *Crisler*, losses need not be specifically enumerated in order to be recoverable economic losses. (*Crisler*, *supra*, 165 Cal.App.4th at p. 1508.) Furthermore, it would be an absurdity if section 1202.4 were interpreted as allowing restitution for attorney fees to preserve a defendant's assets as a cost of collection, but not allowing attorney fees to preserve a victim's assets so that later collection is not necessary. Under such an interpretation, the victim would have been entitled to restitution if it blindly ignored the indications of fraud and paid out on the claim but would not be entitled to restitution for the costs of mitigating its victimization by avoiding paying out claims against fraudulently procured policies. Accordingly, we disagree with defendant's interpretation of *Lyon* that preserving a defendant's assets in advance of a restitution award was an act of collection rather than an economic loss.

Because we hold the attorney fees at issue were an economic loss, we do not address defendant's contention that restitution for losses not authorized by section 1202.4 cannot be imposed as a condition of probation under section 1203.1.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

GAUT
J.

KING
J.